

**ORIGINAL**  
COMMISSIONERS  
BOB STUMP - Chairman  
GARY PIERCE  
BRENDA BURNS  
BOB BURNS  
SUSAN BITTER SMITH

OPEN MEETING ITEM



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ARIZONA CORPORATION COMMISSION

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2013 JAN 11 A 11:07

DATE: JANUARY 11, 2012

DOCKET NO.: RR-03639A-12-0338

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

UNION PACIFIC RAILROAD  
(ABOLISH CROSSING)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JANUARY 22, 2013

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JANUARY 30, 2013 AND JANUARY 31, 2013

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

**DOCKETED**

JAN 11 2013



*Jodi A. Jerich*  
JODI JERICH  
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347  
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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail [SABernal@azcc.gov](mailto:SABernal@azcc.gov).

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 BOB STUMP - Chairman  
4 GARY PIERCE  
5 BREND A BURNS  
6 BOB BURNS  
7 SUSAN BITTER SMITH

8 IN THE MATTER OF THE APPLICATION OF  
9 UNION PACIFIC RAILROAD TO ABOLISH THE  
10 PUBLIC AT-GRADE CROSSING AT MARTIN  
11 ROAD, IN THE TOWN OF SAHUARITA, PIMA  
12 COUNTY, ARIZONA AT USDOT NO. 742-137T.

DOCKET NO. RR-03639A-12-0338

DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

13 DATE OF HEARING: October 18, 2012

14 PLACE OF HEARING: Phoenix, Arizona

15 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

16 APPEARANCES: Mr. Reed Campbell, BEAUGUREAU, HANCOCK  
17 STOLL & SCHWARTZ, P.C., attorneys for the Union  
18 Pacific Railroad Company; and

19 Mr. Brian E. Smith, Staff Attorney, Legal Division, on  
20 behalf of the Safety Division of the Arizona Corporation  
21 Commission.

22 **BY THE COMMISSION:**

23 On July 25, 2012, the Union Pacific Railroad ("Railroad") filed with the Arizona Corporation  
24 Commission ("Commission") an application for approval for the Railroad to abolish the public at-  
25 grade crossing at Martin Road, in the Town of Sahuarita, Pima County, Arizona at USDOT No. 742-  
26 137T ("Application").

27 On August 2, 2012, by Procedural Order, a hearing was scheduled and the Railroad was  
28 ordered to notify any interested party of the Application and the hearing.

On September 6, 2012, the Railroad filed certification that it had provided public notice  
pursuant to the Commission's Procedural Order.

On September 27, 2012, the Commission's Safety Division Railroad Safety Section ("Staff")  
filed its report recommending approval of the Application.

On October 17, 2012, the Town of Sahuarita filed a memorandum in which it indicated that it

1 was not opposed to the Railroad's initiating the appropriate notifications and following the necessary  
2 procedures to reach an acceptable resolution for the proposed closure.

3 On October 18, 2012, a full public hearing was held before a duly authorized Administrative  
4 Law Judge of the Commission at its offices in Phoenix, Arizona. The Railroad and Staff appeared  
5 with counsel. At the conclusion of the hearing, the matter was taken under advisement pending  
6 submission of a Recommended Opinion and Order to the Commission.

7 \* \* \* \* \*

8 Having considered the entire record herein and being fully advised in the premises, the  
9 Commission finds, concludes, and orders that:

10 **FINDINGS OF FACT**

11 1. On July 25, 2012, the Railroad filed with the Commission a request for approval to  
12 close an existing public at-grade crossing at Martin Road in the Town of Sahuarita ("Town") in Pima  
13 County, Arizona at USDOT No. 742-137T.

14 2. On August 2, 2012, the Commission issued a Procedural Order which ordered that a  
15 hearing be held and ordered the Railroad to provide public notice as follows: by mailing copies of  
16 the Application and Procedural Order to affected governmental entities and any other interested  
17 parties; by publishing notice of the proceeding in a newspaper of general circulation; and by posting  
18 visible signage within ten feet of each side of the roadway approach to the public at-grade crossing  
19 notifying the public of the proposed closure and the hearing thereon. In response thereto, the  
20 Commission has received no objections to the Application.

21 3. The Railroad claims that the proposed closing will improve public safety in the area  
22 because the existing crossing is a two-lane unimproved dirt road running in an east-west direction  
23 with only passive crossing devices consisting of stop signs and cross-bucks for protection. Two  
24 subdivisions are located to the east of the crossing, Quail Creek and Madera Highlands, and they are  
25 each primarily accessible by improved paved crossings with active warning devices via either Quail  
26 Crossing Boulevard or Madera Highland Parkway.

27 4. The hearing was held as scheduled on October 18, 2012.

28 5. The Application requests that the Railroad be authorized to abolish the crossing to

1 improve public safety and to remove an unnecessary public at-grade crossing.

2         6.       The Railroad's Manager of Industry and Public Projects, Mr. Alexander Popovici,<sup>1</sup>  
3 testified in favor of the Application stating that the crossing consists of two sets of tracks where they  
4 intersect with the dirt roadway. (Tr. 5-6: 19-4)

5         7.       Mr. Popovici testified that the Town, which is the road authority for the at-grade  
6 crossing at Martin Road, supports the Application. (Tr. 6-7: 15-1)

7         8.       Mr. Popovici testified that on a typical day approximately eight trains utilize the  
8 crossing with an average speed of approximately 35 miles per hour. (Tr. 7: 4-12)

9         9.       Mr. Popovici stated that the closing of the Martin Road public at-grade crossing will  
10 be in the public interest due to the primitive safety features at the crossing and because the other two  
11 public crossings at Quail Crossing Boulevard and Madera Highlands Parkway are improved with state-  
12 of-the-art automatic warning devices consisting of lights and gates and improved crossing surfaces. (Tr.  
13 8: 17-23)

14        10.      Mr. Popovici further testified that he was unaware of any usage by school buses or  
15 emergency vehicles of the Martin Road crossing. (Tr. 8-9: 24-6)

16        11.      According to Mr. Popovici, the closure at the Martin Road at-grade crossing will make  
17 it safer for the residents of both the Madera Highlands and Quail Creek housing communities which  
18 are located east of the tracks. (Tr. 9: 7-11)

19        12.      Mr. Popovici stated that the Town Engineer had indicated the Town's support for the  
20 Railroad's Application. (Tr. 10: 9-14)

21        13.      Mr. Popovici stated further that the vehicular traffic at the crossing is very low.  
22 (Tr. 11-12: 23-2)

23        14.      Further testifying, Mr. Popovici indicated that he believes that the Railroad will be  
24 able to remove the crossing within a few days to a week upon Commission approval of the  
25 Application. (Tr. 12: 7-9)

26        15.      Mr. Chris Watson, an Assistant Supervisor and Grade-Crossing Inspector for the  
27

28 <sup>1</sup> Mr. Popovici's area includes Arizona, New Mexico and part of Nevada.

Commission, testified concerning Staff's investigation of the Application and a meeting with the respective parties to address safety concerns. He prepared the Staff Report which describes the proposed closure of the Martin Road at-grade crossing. (Tr. 14: 1-14)

16. Mr. Watson testified that Staff is recommending approval of the Application to abolish the public at-grade crossing at Martin Road in the Town. (Tr. 17: 13-17)

17. Mr. Watson further testified that he believes the proposed abolishment of the crossing will serve the public interest and promote safety. (Tr. 17: 13-19)

18. Mr. Watson stated further that Staff supports the closure of the crossing because with the crossing's closure, vehicular traffic will divert to the other two crossings which are protected by automatic warning devices and provide the traveling public with greater safety. (Tr. 19: 6-10)

19. Mr. Watson stated that he had visited the area of the proposed crossing closure and had spoken with fire department representatives who stated that they supported the closure and would use the Madera Highlands and Quail Crossing Boulevard crossings with active warning devices.

20. Staff recommends that the Application be approved.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and over the subject matter of the Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and 40-337.01.

2. Notice of the Application was provided in accordance with the law.

3. The closure of the crossing at Martin Road at USDOT No. 742-137T is in the public interest.

4. Pursuant to A.R.S. §§ 40-336 and 40-337, the Application should be approved as recommended by Staff.

#### ORDER

IT IS THEREFORE ORDERED that the Union Pacific Railroad Company's Application as described herein is hereby approved.

IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall complete the removal of its at-grade crossing at Martin Road in the Town of Sahuarita in Pima County, Arizona at

1 USDOT No. 742-137T, as described in the Application, by May 31, 2013.

2 IT IS FURTHER ORDERED that the Union Pacific Railroad shall notify the Commission, in  
3 writing, within ten days of both the commencement and completion of the removal of the crossing.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.  
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8 CHAIRMAN \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

9  
10 COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

11  
12 IN WITNESS WHEREOF, I, JODI JERICH, Executive  
13 Director of the Arizona Corporation Commission, have  
14 hereunto set my hand and caused the official seal of the  
15 Commission to be affixed at the Capitol, in the City of Phoenix,  
16 this \_\_\_\_\_ day of \_\_\_\_\_ 2013.

17 JODI JERICH \_\_\_\_\_  
18 EXECUTIVE DIRECTOR

19 DISSENT \_\_\_\_\_

20  
21 DISSENT \_\_\_\_\_

MES:db

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1 SERVICE LIST FOR: UNION PACIFIC RAILROAD COMPANY

2 DOCKET NO.: RR-03639A-12-0338

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